

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Erin Frederick Bush**
Docket No. **290607**
L.C. No. **90-000206-FC**

Christopher M. Murray, Chief Judge Pro Tem, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction. The February 3, 2009 order denying defendant's motion for a new trial constituted the denial of a successive motion for relief from judgment because the judgment of sentence was no longer subject to direct appellate review when the motion was brought, MCR 6.501, and defendant had filed multiple earlier motions for relief from judgment after August 1, 1995, MCR 6.502(G)(1). Defendant may not appeal the denial of such a successive motion for relief from judgment. MCR 6.502(G)(1). The exceptions provided by MCR 6.502(G)(2) are inapplicable. Further, contrary to defendant's argument, MCL 770.1 does not grant him a right to file a motion for a new trial outside the motion for relief from judgment procedure. First, MCL 770.2(1) provides that a motion for a new trial shall be made within 60 days after the entry of judgment or within further time allowed by the trial court during that 60-day period. The motion at issue did not meet that requirement. Further, while MCL 770.2(4) does provide that a trial court may grant a motion for a new trial after the 60-day period has expired "for good cause shown," this does not conflict with MCR 6.502(G)(2). Rather, these provisions may be read harmoniously with MCR 6.502(G)(2) specifying what constitutes good cause for entertaining a motion for a new trial in the form of a successive motion for relief from judgment.

The motion to remand is DENIED as moot.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 14 2009
Date

Sandra Schultz Mengel
Chief Clerk